

BESSETTE, Steven M.  
Appl. No. 10/765,093

Atty. Docket No. 4380-150

### REMARKS/ARGUMENTS

Claims 1 and 3-14 are pending. Claim 2 is canceled without prejudice or disclaimer of the subject matter it contains. Claims 1, 3-7 and 9 are amended to encompass infringing subject matter. Claims 11-14 are added. No new matter has been introduced. By the above amendments, Applicant does not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which Applicant is entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicant reserves the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims.

### REJECTION UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 1-10 under 35 U.S.C. § 103(a), as allegedly being unpatentable over Bessette (WO00/51436) and Tworkoski (Journal Reference: "Herbicide Effects of Essential Oil," *Weed Science*, 50(4):425-431 (2002)). Applicants respectfully traverse this rejection.

In response, it is noted that Bessette is a counterpart international patent application that is related to a U.S. patent application that has issued as U.S. Patent No. 6,506,707. Both Bessette and related U.S. Patent No. 6,506,707 were assigned to EcoSmart Technologies, Inc., of Franklin, Tennessee, as evidenced by an assignment document recorded in the USPTO assignment branch records at Reel/Frame 010987/0829. Further, the above-captioned patent application has also been assigned to EcoSmart Technologies, Inc., of Franklin, Tennessee, as evidenced by an assignment document recorded in the USPTO assignment branch records at Reel/Frame 014317/0370. As such, Applicant respectfully submits the subject matter disclosed

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in both Bessette and the above-captioned patent application were owned, at the time the claimed invention was made, by the same person or subject to an obligation of assignment to the same person. See MPEP 706.02(1)(1) & (2). Thus, reconsideration and withdrawal of this rejection are respectfully requested.

### CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Please grant any extension(s) of time deemed necessary for entry of this communication. The Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140. Please credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

Date: April 20, 2005

By: Willem F. Gadiano

Willem F. Gadiano

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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (703) 872-9306 on the date indicated below, with a coversheet addressed to Commissioner for Patents, U.S. Patent and Trademark Office.

Date: April 20, 2005

By: Willem F. Gadiano

Willem F. Gadiano, Reg. No. 37,136